

**FARAD CONTINUATION SHEET No.**  
**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH AT NAGPUR**

**Writ Petition No. 1446/2006**  
**(Rajeshkumar Onkarrao Pachapor VERSUS State of Maharashtra & others)**

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Office Notes, Office Memoranda of Coram,  
appearances, Court's orders of directions  
and Registrar's orders  
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Court's or Judge's orders

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Mr. Jibhkate, counsel for the petitioner.  
Mr. Sonak, Assistant Government Pleader for R-1 & 2.  
Mr. Kilor, counsel for the R-3 & 4.

**CORAM : D.D.SINHA AND**  
**SMT. VASANTI A. NAIK, JJ.**  
**DATE : NOVEMBER 29, 2007.**

Heard Mr. Jibhkate, the learned counsel for the petitioner, Mr. Sonak, the learned Assistant Government Pleader for the respondent nos.1 and 2 and Mr. Kilor, the learned counsel for the respondent nos.3 and 4.

The controversy involved in the present petition, in nutshell, is as follows:

The petitioner who was appointed as Assistant Teacher in the year 1996 did not have requisite qualification for the post of Assistant Teacher but, had qualification which was requisite for the post of Physical Training Instructor. The Education Officer granted approval to the post held by the petitioner in the year 1996 itself. However, at the later point of time, the auditor, while conducting audit of the concerned school, detected that the petitioner

though was appointed and working as Assistant Teacher did not possess the requisite qualification for the said post, and therefore, issued direction to the management to credit the amount of salary which is paid to the petitioner, to the Education Department of State. The counsel for the petitioner has submitted that the Education Officer, at a later point of time, vide communication dated 30.09.2005 addressed to the State, annexed to the petition as Annexure-VIII, mentioned that if the management is ready and willing, fresh proposal of the petitioner in respect of grant of approval for the post of Physical Training Instructor may be submitted. However, the management informed the Education Officer that such proposal with retrospective effect was not possible for the management to submit since there is no provision under the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 in this regard.

The counsel for the petitioner further contended that the petitioner moved Civil Application No.23/2007 in the present writ petition and this Court on 03.08.2007 passed an order wherein the Court has reproduced the contention of Mr. Jibhkate that the applicant did not want to press the said application if the management would furnish appropriate proposal in response to the letter/communication dated 30.09.2005 (wrongly mentioned as 2004). It is contended that pursuant to the said order, the

respondent nos.3 and 4 have filed a pursis dated 12.09.2007 in the present petition, which reads thus;

“The Respondent management submits that the management will submit as corrigendum to treat the petitioner as “Physical Instructor” as there is no provision to issue appointment order in back date, under M.E.P.S. Act and Rules. The management will submit such corrigendum without prejudice to the legal rights of the Respondent management and such corrigendum would be for limited purpose to treat the petitioner as “Physical Instructor” for grant of approval.”

Mr. Sonak, the learned Assistant Government Pleader, states that the corrigendum which is mentioned in the pursis has not been received by the office of the Education Officer, however, if such corrigendum is received, same would be considered and appropriate decision on the said corrigendum would be taken by the Education Officer at the earliest.

Mr. Kilor, the learned counsel for the respondent nos.3 and 4, states that the management shall forward the corrigendum mentioned in the pursis dated 12.09.2007 to the Education Officer positively within a period of two weeks.

In the backdrop of the above referred facts, the cause of action in the present petition, does not survive. However, we expect the Education Officer to

act accordingly after receipt of the corrigendum from the management. With these observations, the writ petition is disposed of.

JUDGE

JUDGE

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**CORAM : D.D.SINHA AND**  
**SMT. VASANTI A. NAIK, JJ.**  
**DATE : NOVEMBER 29, 2007.**

**C.A. NO. 8501/2007**

This civil application is moved by the petitioner for taking action against respondent nos.1 and 2 under the provisions of Contempt of Court Act which is reflected in prayer clause (i) of the application as well as direction to respondent nos.3 and 4 to submit all the documents in compliance of the letter dated 30.09.2005.

The counsel for the petitioner does not press the prayer clauses (i) and (ii) in view of the order dated 29.11.2007.

So far as prayer clause (iii) is concerned, the petitioner is seeking direction to respondent nos.3 and 4 to permit the petitioner to discharge his regular duties and extend all benefits accrued therefrom. So far as this relief is concerned, this Court in order

dated 03.08.2007 has already observed that the petitioner is entitled to canvass this grievance before the appropriate forum. In that view of the matter, we are not required to issue any directions in respect of the prayers made in the civil application and the same is disposed of accordingly.

JUDGE

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